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DEC 12 2007

In re Application of	:	
Paul Joseph Stewart et al	:	
Application No. 10/020,362	:	OFFICE OF PETITIONS
Filed: October 30, 2001	:	DECISION ON PETITION.
Attorney Docket No. 200-1772	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 16, 2007, to revive the above application, and on the subsequent petition, filed March 22, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application and refund of the petition fee submitted on March 16, 2007.

The petition under 37 CFR 1.137(b) is DISMISSED as moot in view of the granting of the petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is GRANTED.

This application was held abandoned for failure to timely pay the issue and publication fees on or before June 23, 2006, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed March 23, 2006.

Petitioner states that the Notice of March 23, 2006 was returned to the USPTO as undeliverable and was re-mailed on October 2, 2006, the date shown on the envelope, to the old address, which was again returned to the USPTO as undeliverable. This second mailing did not include a new mailing date or period for paying the issue and publication fees. Petitioner states that it was not until January 2, 2007 that he became aware of the existence of the Notice and immediately paid the issue fee on January 3, 2007. Petitioner submits that the payment of the issue fee within three months of the second mailing is a timely submission and requests reconsideration of the holding of abandonment. Additionally, petitioner requests a refund of the \$1,500 petition fee paid on March 16, 2007.

A review of the file record discloses that a first Notice was mailed on March 23, 2006, which was returned as undeliverable to the USPTO. Subsequently, the Office remailed, on October 2, 2006, a second Notice to the same address and did not reset the period, which Notice was also returned as undeliverable.

In accordance with *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Commr. Pat. 1924), when an Office communication is returned to the Office, the Office will check the application file record to ensure that the action was mailed to the correct correspondence address. If not, the Office action should be stamped "remailed" with the remailing date and mailed to the correct correspondence address with the period for reply being reset from the remailed date. Note MPEP 707.13. There is no indication in the file record that the Office followed this procedure. Therefore, the period for timely paying the issue and publication fees will be considered to have been reset, *nunc pro tunc*, with the remailing of the Notice on October 2, 2006, with the issue and publication fees now being due on or before January 2, 2007.

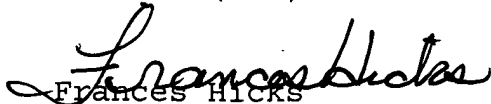
It is noted that the Federal Government offices were closed on January 2, 2007, which would have been the due date for payment of the issue and publication fees. Accordingly, the payment of the issue and publication fees on the next business day, January 3, 2007, is considered to be a timely reply to the Notice remailed on October 2, 2006.

In view of the above, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

It is noted that the \$1,500 petition fee submitted on March 16, 2007 has already been refunded to petitioner.

This application is being referred to the Office of Data Management for further processing in accordance with this decision withdrawing the holding of abandonment for failure to timely pay the issue and publication fees.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218 or to the Office of Petitions Help Desk at (571) 272-3282 after January 3, 2008.


Frances Hicks
Petitions Examiner
Office of Petitions